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Our File No. 06/4423

VIA EMAIL

City of Hamilton
General Issues Committee
Hamilton City Hall
71 Main Street West
Hamilton, ON L8P 4Y5

Attention: Stephanie Paparella, Legislative
Coordinator (stephanie.paparella@hamilton.ca)

Dear Chair and Members:

**Re: GRIDS 2 and Municipal Comprehensive Review – Land Needs Assessment and
Technical Background Reports (PED1701(h))(City Wide)**

We are the lawyers for Upper West Side Land Owners Group Inc., Spallaci & Sons Limited, 2112443 Ontario Ltd., Twenty Roads Developments Inc., Sullstar Twenty Limited, Lynmount Developments Inc., 909940 Ontario Ltd., and Liv Developments Ltd. (collectively, the "**UWS Landowners**"), the applicants in UHOPA 2020-011, which is an application for a City-wide amendment to the Urban Hamilton Official Plan ("**UHOP**") and an area-specific amendment for the lands located in the Twenty Road West area (the "**UWS Lands**"), which has since been appealed to the LPAT.

The UWS Landowners have also filed an application for an urban boundary expansion, being Municipal File Numbers UHOPA-20-018, 20-019, 20-020, in accordance with Policy 2.2.8.5 of the Growth Plan, 2019. This application was deemed complete on September 15, 2020.

We have reviewed the "GRIDS 2 and Municipal Comprehensive Review – Land Needs Assessment and Technical Background Reports (PED1701(h)) (City Wide)" (the "**Report**"), which we understand is to be considered by the General Issues Committee (the "**Committee**"), at the meeting scheduled for December 14, 2020.

On behalf of our clients, we are pleased to submit this letter for consideration by the Committee, in conjunction with a deputation to be made by our clients' planning consultants, Corbett Land Strategies Inc.

Recommendation (p. 1 of 43)

The UWS Landowners support recommendations (c) and (d), and take no position with respect to recommendation (b).

However, the UWS Landowners support recommendation (a) subject to the proposed change to the language at number 4 of GRIDS 10 Directions (Appendix A to the Report):

4. Protect rural areas for a viable rural economy, agricultural resources, environmentally sensitive recreation and the enjoyment of the rural landscape **and avoid urbanization of prime agricultural areas.**

GRIDS (2006) (p. 3 of 43)

The Report attempts to characterize GRIDS (2006), the adoption of the UHOP by Council (2009), and the subsequent approval by the Ministry of Municipal Affairs (2011), as a municipal comprehensive review process under the definition contained in the Growth Plan.¹ The Report further states that Elfrida was identified as the City's preferred growth option to be included in the urban boundary subject only to a secondary planning process.²

The process described in the Report did not constitute an MCR justifying any Urban Boundary Expansion. The Report's conclusion that Elfrida was identified as the City's preferred growth area to be included within the urban boundary subject only to a secondary planning process misstates the requirements set out in the as-adopted UHOP. The UHOP specifically requires a municipally initiated comprehensive review and secondary plan to support the extension of the urban boundary into Elfrida, or elsewhere.

Section 2.2.1 of the UHOP states that "*the exact limits of lands to be included as part of the urban boundary expansion shall be determined as part of a municipally initiated comprehensive review and secondary plan*"³, while section 2.2.2 of the UHOP states "*no urban boundary expansion shall occur until a municipally initiated comprehensive review and secondary plan have been completed*".⁴ Further, section 2.2.3 sets out a series of comprehensive steps that the City must undertake prior to the initiation of an Urban Boundary Expansion, including, among other things "*a comprehensive review and land budget analysis*", "*a sub-watershed plan*", "*Environmental Impact Statements*", and a justification that there are no alternatives that avoid prime agricultural areas.⁵

It is clear that no MCR has been completed in accordance with the as-adopted UHOP policies, set out above, to justify an Urban Boundary Expansion to Elfrida, or elsewhere. It is unclear why

¹ Report, p. 3.

² Report, p. 3.

³ UHOP, Chapter B – Communities, Section 2.2.1.

⁴ UHOP, Chapter B – Communities, Section 2.2.2.

⁵ UHOP, Chapter B – Communities, Section 2.2.3.

the Report fails to mention the fact that these policy requirements have not been met and suggests that only a secondary plan is required to permit an expansion to Elfrida.

We would also like to bring to the Committee's attention aspects of the historical background, which are an important part of our submission, and are set out below:

May 2006 GRIDS included the UWS Lands as a preferred area for growth to round out the existing neighbourhood north of the proposed Airport Employment Growth District (the "AEGD") and south of Twenty Road, more particular described as follows:

- *"Small expansion to round out existing neighbourhoods between the airport employment area and existing residential area (95 net hectares) south of Twenty Road and east of Glancaster Road in the Deferral 11 area of the Regional Official Plan"*

See Council-approved Preferred Growth Option, Figure 10 from GRIDS, which is attached.

September 2006 UWS Lands were included as part of the study for urbanization (SPA 9) in the context of the proposed AEGD.

In accordance with SPA 9, as approved by the Ontario Municipal Board, any lands beyond those identified for the proposed AEGD will be considered in the context of a comprehensive amendment for other urban uses.

October 2010 City adopts the AEGD, which proposes urbanization of the UWS Lands as part of the AEGD.

2015 AEGD boundaries established by OMB exclude the UWS Lands from the designated AEGD and therefore to be considered for other urban uses.

2017-2022 City Projected Timeline to Complete MCR.

May 2019 Province approves new Growth Plan, including the following section:

5. Notwithstanding policies 2.2.8.2 and 5.2.4.3, a *settlement area* boundary expansion may occur in advance of a *municipal comprehensive review*, provided:
 - a) the lands that are added will be planned to achieve at least the minimum density target in policy 2.2.7.2 or 2.2.5.13, as appropriate;
 - b) the location of any lands added to a *settlement area* will satisfy the applicable requirements of policy 2.2.8.3;
 - c) the affected *settlement area* is not a *rural settlement* or in the *Greenbelt Area*;
 - d) the *settlement area* is serviced by *municipal water and wastewater systems* and there is sufficient reserve *infrastructure* capacity to service the lands; and
 - e) the additional lands and associated forecasted growth will be fully accounted for in the land needs assessment associated with the next *municipal comprehensive review*.

January 13, 2020 UWS Landowners Group submit Proposed Policy Amendments to establish City wide and site specific OP policies for consideration of privately initiated Urban Boundary Expansion application for the UWS Lands (UHOPA-20-011).

Application deemed complete on May 22, 2020.

August 12, 2020 UWS Landowners Group submit privately initiated Urban Boundary Expansion applications which conform to the criteria in the 2019 Growth Plan (UHOPA-20-018, UHOPA-20-019, UHOPA-20-020).

Applications deemed complete Sept 15, 2020.

Appendix B – Land Needs Assessment to 2051 Technical Working Paper

The Land Needs Assessment (the "LNA") attached as Appendix B to the Report concludes that the City has a sufficient supply of employment lands to 2051.

In our view, this conclusion supports the position that the UWS Landowners have been taking with respect to the UWS Lands for the past 15 years, which is that the UWS Lands are not viable employment lands and, in any event, are not needed by the City for the employment land supply.

It was as a result of our clients' appeal of the AEGD that the size of the employment area was reduced to an appropriate size and configuration.

In light of the fact that the LNA recognizes that the UWS Lands are not required for the employment land supply and are, in any event, not viable employment lands, there is no other option but to proceed with urbanization of the UWS Lands for new community development.

6.3 – Key Decision #3 – Community Area Land Need (pp. 33-41)

(i) Evaluation of Whitebelt Lands

As set out in the draft LNA, most or all of the City's Community Area whitebelt lands (excluding Whitechurch), will be required for future growth to the year 2051.⁶ An immediate urban boundary expansion for the UWS Lands has no potential to undermine the GRIDS 2 / MCR process given that the UWS Lands represent only a small percentage of the community land need requirements, as set out in Table 7 to the Report, which is reproduced below:

Intensification Target	Community Area Land Need to 2051 (ha)	UWS Lands Percentage of Total Community Area Land
40%	3,440	5%
50%	2,200	7%
55% (average of phased target)	1,640	10%
60% (average of phased target)	1,340	13%

We note further that the Report omits a key fact, namely that, unlike the other whitebelt lands,⁷ the UWS Lands are a true infill situation completely surrounded by the existing urban area and are adjacent to a stable, existing residential community on the north side of Twenty Road. By

⁶ Report, p. 35.

⁷ With the exception of the Garner Road lands.

contrast, Elfrida and the Twenty Road East Lands are sprawl areas outside the fringe of the urban boundary.

(ii) Whitebelt Land Areas and Previous Planning Decisions

The Report states that "*through the GRIDS study design and analysis, Elfrida was identified as the preferred growth option after scoring highest in the evaluation criteria overall*".⁸ But the Report fails to mention that the UWS Lands were also included (along with Elfrida) as part of the Preferred Growth Option set out at Figure 10 of GRIDS (which is attached to this letter as **Schedule "A"**). GRIDS also described the UWS Lands as a small expansion to round out existing neighbourhoods between the airport employment area and existing residential area.⁹

The Report states that through the 2015 AEGD Minutes of Settlement, "*it was agreed that Elfrida was the City's next area for future residential growth, and that a westerly order of future growth progression for residential purposes would follow to Twenty Road East*".¹⁰

This statement is not correct. To be clear, pursuant to para. 14 of the Minutes of Settlement, the parties simply agreed that it was the "*intent*" of the City that "*...the Elfrida lands are its first priority for non-employment lands*" and that the "*Twenty Road East Lands.. are the City's next priority for non-employment lands after the Elfrida lands*". In other words, this was not an agreement between the parties about the progression of future growth. Rather, it was a statement of the City's intent only. The Minutes of Settlement was not a planning decision and was never approved by the LPAT.

The City's expression of intent, as provided in the Minutes of Settlement, was not supported by any public planning process or technical justification. For example, Twenty Road East has never been considered in any public planning process for an urban boundary expansion. The 2006 Council motion referred to at p. 37 of the Report was not a planning process and, to our knowledge there has been no technical justification or planning study that has ever been submitted in support of residential development of the Twenty Road East Lands. Moreover, to our knowledge, the Elfrida landowners have not completed and submitted any technical justifications in the context of a public planning process in support of an urban boundary expansion. If these lands are to be considered at all for a future urban boundary expansion, they will have to go through the required substantial study and public planning process which could take a decade or more.

In any event, on October 6, 2020, when Council decided to refuse the UWS Landowners' application in UHOPA 2020-011, Council adopted the following resolution:

"That all eligible lands including Twenty Road West lands be part of the consideration of future growth options (residential or employment) as part of GRIDS 2 / MCR".

⁸ Report, p. 37.

⁹ GRIDS (2006), p. 75.

¹⁰ Report, p. 37.

Conclusions

The UWS Landowners' urban boundary expansion can now be approved for the following reasons:

1. The LNA confirms that the UWS Lands are not required for employment uses.
2. The UWS Lands are fully surrounded by the existing urban boundary (unlike Elfrida and the Twenty Road East Lands), and therefore, expansion of the urban boundary to include the UWS Lands would infill gaps in the existing urban boundary.
3. The LNA confirms that the UWS Lands are required under any scenario to accommodate growth.
4. The UWS Lands are the only whitebelt lands that are not substantially designated prime agricultural as shown in Schedule "B" to this letter.
5. All of the technical studies in support of the proposed urban boundary expansion application have been submitted and the application has been deemed complete.
6. UWS Landowners' urban boundary expansion application is permitted by the Growth Plan, 2019, and meets all of the required criteria.

Thank you for your consideration of this submission and our clients' delegation to the Committee.

Yours truly,

FOGLER, RUBINOFF LLP

"Joel D. Farber"

Joel D. Farber* and Maxwell L.C. Reedijk

*Services provided through a professional corporation

JDF

Schedule "A"

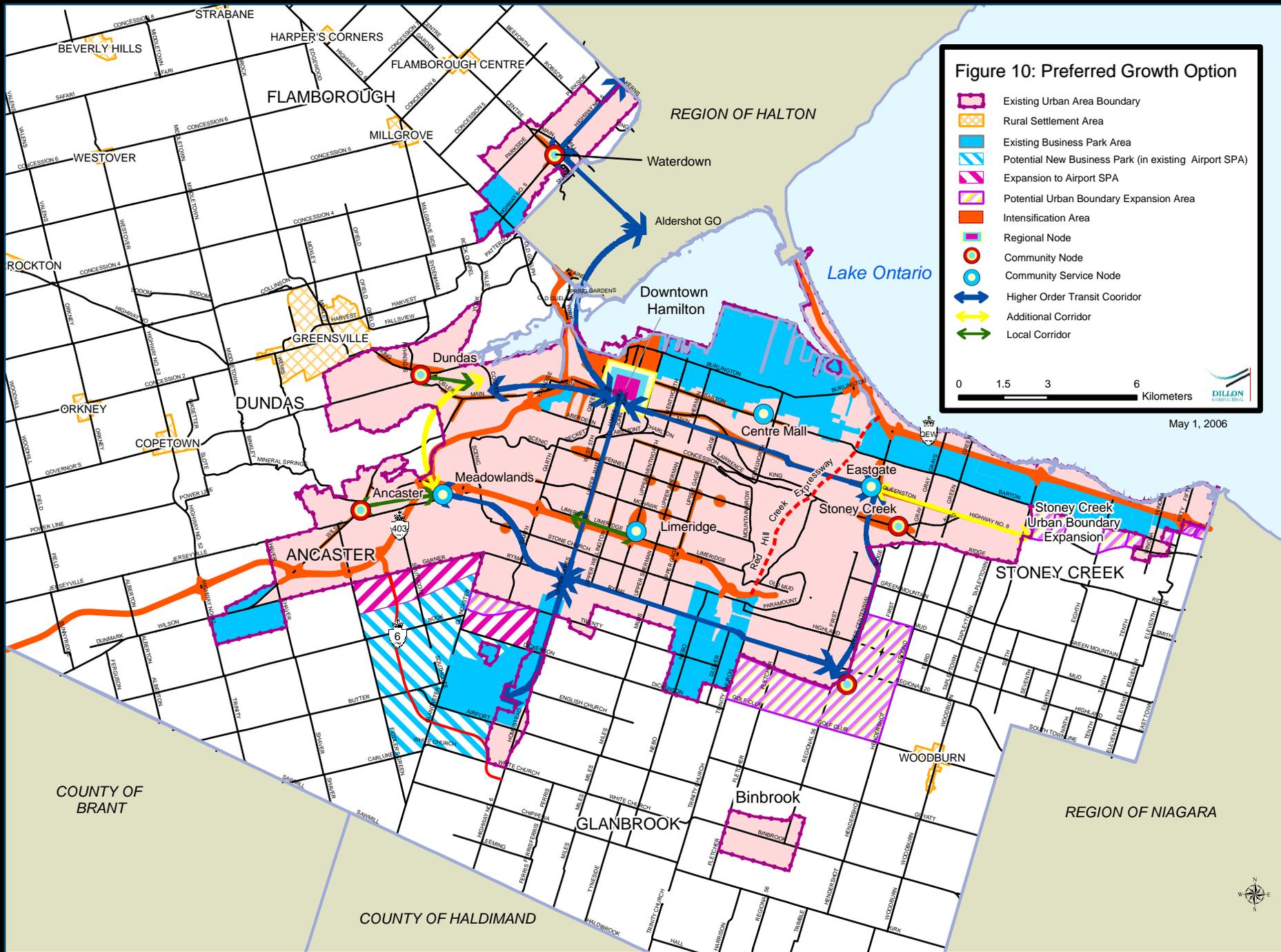


Figure 10: Preferred Growth Option

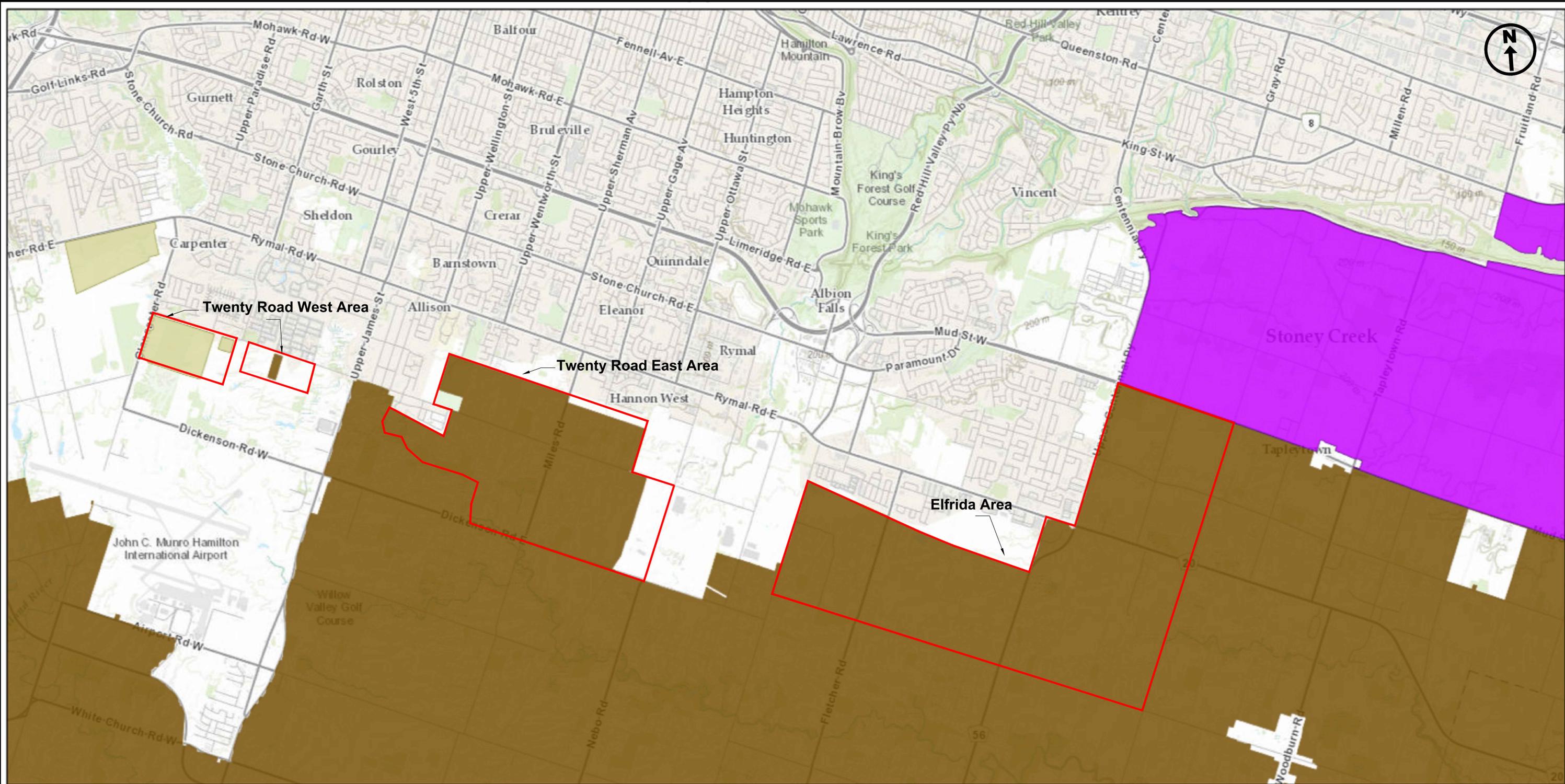
- Existing Urban Area Boundary
- Rural Settlement Area
- Existing Business Park Area
- Potential New Business Park (in existing Airport SPA)
- Expansion to Airport SPA
- Potential Urban Boundary Expansion Area
- Intensification Area
- Regional Node
- Community Node
- Community Service Node
- Higher Order Transit Corridor
- Additional Corridor
- Local Corridor

0 1.5 3 6 Kilometers

DILLON CONSULTING

May 1, 2006





LEGEND

	Prime Agricultural Area
	Candidate Area (Lesser Quality Agricultural Lands)
	Specialty Crop Area

OMAFRA PRIME AGRICULTURAL MAPPING

Future Growth Areas

Hamilton, Ontario